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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/536,972	02/01/2006	Ian Anderson	6.70.1065 PCT/IB-US	6290

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7590

12/19/2008

EXAMINER

MCCALISTER, WILLIAM M

ART UNIT	PAPER NUMBER
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3753

MAIL DATE	DELIVERY MODE
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12/19/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/536,972	Applicant(s) ANDERSON ET AL.	
	Examiner WILLIAM MCCALISTER	Art Unit 3753	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 October 2008 (Amendment).
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-104 is/are pending in the application.
- 4a) Of the above claim(s) 28-104 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-27 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

3. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Art Unit: 3753

4. Claims 1-19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mockesch (US 4,256,150) in view of Sonoco (GB 2 210 865 A) and Sieger (DE 39 22 779 A1).

Regarding claims 1-8 and 12-16, Mockesch discloses a method of filling and dispensing an alcohol beverage into a bag contained in a keg, the method comprising the steps of:

filling a bag with beer (see col. 3 lines 4-6), and

applying a gas under pressure into the container against the bag (see col. 3 lines 3-8) to facilitate dispensing of the beverage from the bag

Mockesch does not disclose the step of pre-inflating the bag with inert carbon dioxide to displace the air therein, prior to filling the bag with beer. However, Sonoco teaches that to avoid spoilage of beer, it was known in the art at the time of invention to pre-inflate such a bag with carbon dioxide (see written description page 1 paragraph 2). To avoid spoilage of the beer held by Mockesch's device, it would have obvious to one of ordinary skill in the art to pre-inflate Mockesch's bag with carbon dioxide.

Neither Mockesch nor Sonoco disclose the step of venting carbon dioxide from the bag during the step of filling the bag with beer. However, Sieger teaches that it was known in the art at the time of invention to vent an inert gas from an inflatable bag during the step of filling the inflated bag with a beverage (as shown at FIG 2). To allow the full volume of Mockesch's bag to be utilized for the storage of beer, it would have

Art Unit: 3753

been obvious to one of ordinary skill in the art at the time of invention to vent the carbon dioxide from the bag during the step of filling the inflated bag with beer.

Neither Mockesch, Sonoco, nor Sieger disclose the step of evacuating the container of air located between the container and the bag. However, it was common knowledge at the time of invention that a positive pressure in one direction has the same effect as a negative pressure in the opposite direction. Therefore, it would have been obvious to one of ordinary skill in the art at the time of invention to inflate Mockesch's bag with inert gas by creating a vacuum state on the exterior thereof (between the bag and the container), rather than by creating a state of positive pressure on the interior thereof.

Regarding claims 9, 10, 17 and 18, Sonoco teaches inflating the bag to a volume corresponding to that of the container, so that the bag is in contact with the inside walls of the container (see written description page 1 paragraph 2 – “It may then be inflated ... until it is in intimate contact with the casing”).

Regarding claims 11 and 19, Mockesch discloses the container (1) to be a beer keg (broadest reasonable interpretation includes a pressurized container for holding beer) that supports the bag relative thereto.

Art Unit: 3753

5. Claims 1-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Mockesch in view of Sonoco, Sieger and Pitts (3,527,021).

In the alternative, regarding claims 1-8 and 12-16, Mockesch, Sonoco and Sieger disclose the claimed inventions (see the analyses above) with exception to the step of evacuating the container of air located between the container. However, Pitts teaches that it was known in the art to inflate a bag by creating a vacuum on the exterior thereof. It would have been obvious to one of ordinary skill in the art at the time of invention to fill Mockesch's bag with an inert gas by creating a negative pressure differential with respect to atmosphere on the exterior thereof, rather than with a positive pressure differential on the interior thereof.

Regarding claims 9-11 and 17-19, see the corresponding analyses under paragraph 4, above.

Regarding claims 20-24, Mockesch discloses a method of filling an alcohol beverage into a bag contained in a container having a valve system mounted with the bag and container, the method comprising the step of:

filling a bag with beer through a second valve (generally fitting 10, see col. 2 lines 39-50 and col. 3 lines 4-6, which imply that a valve is used to prevent the beer from exiting through the hose 15 when it is meant to be dispensed from the bottom of fitting 10).

Mockesch does not disclose the step of inflating the bag with inert carbon dioxide prior to filling the bag with the beverage. However, Sonoco teaches that to avoid spoilage of beer, it was known in the art at the time of invention to pre-inflate the bag with carbon dioxide using a second valve (16, which is also used to fill the bag with beer). To avoid spoilage of the beer held by Mockesch's device, it would have obvious to one of ordinary skill in the art to pre-inflate Mockesch's bag with carbon dioxide through the second valve.

Neither Mockesch nor Sonoco disclose the step of venting carbon dioxide from the bag. However, Sieger teaches that it was known in the art at the time of invention to vent an inert gas through a third valve (10) from an inflatable bag during the step of filling the inflated bag (as shown at FIG 2). To allow the full volume of Mockesch's bag to be utilized for the storage of beer, it would have been obvious to one of ordinary skill in the art at the time of invention to vent the carbon dioxide from Mockesch's bag through a third valve, as taught by Sieger.

Neither Mockesch, Sonoco, nor Sieger discloses the step of evacuating the container of air located between the container and the bag. However, Pitts teaches that it was known in the art to inflate a bag by creating a vacuum on the exterior thereof. It would have been obvious to one of ordinary skill in the art at the time of invention to fill Mockesch's bag with carbon dioxide by creating a negative pressure on the exterior

Art Unit: 3753

thereof, rather than with a positive pressure on the interior thereof. Further, because check valves were well known in the art at the time of invention to allow flow in one direction while avoiding a loss of pressure differential, it would have been obvious to one of skill in the art to utilize a check valve (the first valve) for avoiding loss of vacuum pressure in this arrangement.

Regarding claims 25 and 26, see the analysis of claims 17 and 18 above.

Regarding claim 27, see the analysis of claim 19 above.

Response to Arguments

6. Applicant's arguments filed 10/20/2008 with respect to claims 1-4 as rejected under 102(b) have been considered but are moot in view of the new ground(s) of rejection.

7. Applicant's arguments regarding all other rejections have been fully considered but they are not persuasive.

a. Applicant argues that it would not have been obvious to inject carbon dioxide into the bag by creating a vacuum on the exterior of the bag, rather than by utilizing a high pressure source of carbon dioxide connected to the interior of the bag. In support of this argument, Applicant points to the fact that the method disclosed by the immediate application does not use the negative pressure to inflate the bag with carbon dioxide, and that evacuation is performed prior to

Art Unit: 3753

inflation of the bag with carbon dioxide. (Remarks, pp. 7-9.) In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., the time at which the air is evacuated from the keg, and the purpose therefor) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). Also, the fact that Applicant has recognized another advantage which would flow naturally from following the suggestion of the prior art cannot be the basis for patentability when the differences would otherwise be obvious. See *Ex parte Obiaya*, 227 USPQ 58, 60 (Bd. Pat. App. & Inter. 1985).

b. Applicant argues that the combination of references would not render the claimed invention, since Mockesch's bag is pulled out of a jacket (Remarks, p. 7, first paragraph). In response, the relevance of this point is not understood. The injection of any fluid would result in the removal of Mockesch's bag from the jacket.

c. Applicant argues that Mockesch is irrelevant because it does not disclose the step of pre-inflating the bag. In response, the rejection relies on Sonoco for this teaching. Mockesch is used to show the step of filling a bag with beer, where the bag is inside of a keg.

Conclusion

Art Unit: 3753

8. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **WILLIAM MCCALISTER** whose telephone number is (571)270-1869. The examiner can normally be reached on Monday through Friday, 9-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gregory Huson can be reached on 571-272-4887. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3753

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/WILLIAM MCCALISTER/
Examiner, Art Unit 3753

WM
12/10/2008

/Timothy L Maust/

for Gregory Huson, SPE of Art Unit 3751